

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ALAN GULKIS, individually and on behalf
of all others similarly situated,

Plaintiff,

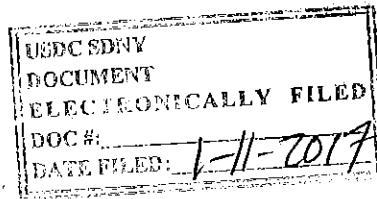
v.

ZICAM LLC and MATRIXX
INITIATIVES, INC.

Defendants.

Case No. 15-cv-09843-CS (S.D.N.Y.)

**JOINT ~~PROPOSED~~ EXPERT
DISCOVERY PLAN AND
STIPULATION**



Plaintiff Alan Gulkis and Defendants Zicam LLC, and Matrixx Initiatives, Inc., by and through their respective counsel of record, hereby stipulate and agree as follows:

WHEREAS, on April 1, 2016, the Court ordered that the parties submit a joint proposed expert discovery plan (Doc. No. 27);

WHEREAS, on April 1, 2016, the Court ordered that all expert discovery is to be completed by June 30, 2017 (Doc. No. 27);

WHEREAS, on the record during a March 23, 2016 hearing in this case, this Court noted that discovery in this case largely overlaps with discovery in an earlier filed action entitled *Melgar v. Zicam LLC et al.*, Case No. 2:14-cv-00160-MCE-AC (E.D. Cal.) (the "*Melgar* Action"), which involves similar allegations related to representations made by Defendants about their cold products;

WHEREAS, the parties agree with the Court that the discovery in this case largely overlaps with the discovery in the *Melgar* Action;

WHEREAS, the parties anticipate they will use the same expert reports previously disclosed in the *Melgar* Action;

WHEREAS, the parties have also agreed that, to avoid duplication of effort and unnecessary expense, all discovery conducted in the *Melgar* Action, including, but not limited to, documents, depositions, and responses to interrogatories, shall be deemed to have been produced in this Action;

NOW, THEREFORE, IT IS HEREBY STIPULATED, by and between the undersigned counsel for the Parties as follows:

1. Expert disclosures previously made in the *Melgar* Action shall be deemed to have been timely made in this Action, including Plaintiff's disclosure of the 6/8/15 Expert Report of Noel R. Rose, M.D., Ph.D., the 6/8/15 Expert Report of Dr. R. Barker Bausell, the 6/8/15 Declaration of Colin B. Weir, the 7/8/15 Rebuttal Expert Report of Dr. Edzard Ernst, and the 7/8/15 Rebuttal Declaration of Elizabeth Howlett, Ph.D., as well as Defendants' disclosure of the 6/8/15 Expert Report of Harri Hemila, M.D. Ph.D, the 6/8/15 Expert Report of Ronald Eccles, B.Sc., Ph.D., D.Sc, the 6/8/15 Expert Report of David Stewart, Ph.D., the 6/8/15 Expert Report of Dr. Peter A.G. Fisher, and the 6/8/15 Expert Report of Sabrina G. Sobel, Ph.D.

2. All discovery conducted in the *Melgar* Action, including but not limited to expert depositions, may be used in this Action and shall be treated as if it was obtained in this Action.

3. Any additional or revised expert disclosures pursuant to Fed. R. Civ. P. 26(a)(2) shall be made on or before **February 17, 2017**.

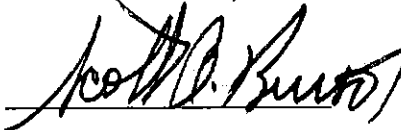
4. Any additional or revised expert disclosures intended solely to contradict or rebut evidence on the same subject matter identified by another party, *see* Fed. R. Civ. P. 26(a)(2)(D)(ii), shall be made on or before **March 31, 2017**.

5. Any expert witness previously deposed in the *Melgar* Action shall not be deposed again in this Action, unless a party discloses an additional or revised expert report from that expert.

Dated: January 9, 2017

Respectfully submitted,

BURSOR & FISHER, P.A.

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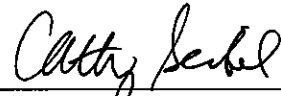
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SO ORDERED this 10th day of January, 2017.



CATHY SEIBEL, U.S.D.J.